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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,165	06/20/2001	Eric B. Cummings	SD-8318	5955
20567	7590	10/19/2004	EXAMINER	
SANDIA CORPORATION P O BOX 5800 MS-0161 ALBUQUERQUE, NM 87185-0161			CHOI, LING SIU	
			ART UNIT	PAPER NUMBER
			1713	
DATE MAILED: 10/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,165

Applicant(s)

CUMMINGS ET AL.

Examiner

Ling-Siu Choi

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 14-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/1/2002, 09/30/2001, 08/27/2001, 06/20/2001
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to the Response to the Restriction Requirement filed August 3, 2004. Claims 1-13 and 26-30 of Group I have been elected without traverse.

Claim Objections

2. Claims 1 and 26 are objected to because of the following informalities: **claim 1**, lines 4 and 9; **claim 26**, line 6 and 10-11 "said flow channel" is suggested to be changed to -- said fluid flow channel--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-13 and 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Cummings [Proceedings of SPIE, **4177** (Microfluidic Devices and System III), 164-173 (2000)].

The present invention relates to an apparatus for dielectrophoretic separation, comprising

1	a fluid flow channel	fluid inlet and outlet means
		a plurality of insulating structures disposed therein
2	an electrode	in electric communication with each fluid inlet and outlet means
3	a power supply means	connected to the electrode

(summary of claim 1)

Cummings et al. disclose an apparatus for dielectrophoretic separation, comprising uniformly patterned arrays of insulating posts, through which particles are electrically driven under a direct-current dielectrophoretic effects (page 164 - Introduction). Thus, the present claims are anticipated by the disclosure of Cummings et al..

5. Claims 1-13 and 26-30 are rejected under 35 U.S.C. 102(a) as being anticipated by Austin et al. (WO 01/37958 A2).

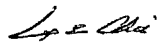
Austin et al. disclose a microchip for polarized particles, comprising constrictions of insulating material for dielectrophoresis powered by an alternating current or direct current signal generator and a hot source that can be heated to specific temperatures (abstract). Thus, the present claims are anticipated by the disclosure of Austin et al..

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ling-Siu Choi whose telephone number is 571-272-1098.

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If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor,
David Wu, can be reach on 571-272-1114.



LING-SUI CHOI
PRIMARY EXAMINER

Ling -Siu Choi, Ph.D.

October 12, 2004